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**Request for City Council Committee Action
From the City Attorney's Office**

Date: June 20, 2003
To: Ways & Means/Budget Committee
Referral to: None

Subject: Carol J. Irvine v. City of Minneapolis, Hennepin County District Court, EM 01-002195.

Recommendation: That the City Council approve settlement of the lawsuit filed by Carol J. Irvine, Hennepin County District Court file no. EM 01-002195, in the amount of \$55,000.00, payable to Carol J. Irvine and her attorney William J. Mavity, and to authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 4000.

Previous Directives: None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by:


Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- ☐ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☒ Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- ☐ Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact: Build Community

Background/Supporting Information

This case arises from conduct dating back to 1994 when Carol Irvine, an Asian American female Minneapolis police sergeant, was not promoted to the position of lieutenant. Ms. Irvine was not promoted on three occasions in 1994 and 1996, involving two separate promotional examinations. The 1994 decisions were made by Chief John Laux and the 1996 decisions by Chief Robert K. Olson. Sgt. Irvine ranked second on the promotional list and moved to the top of the list after the first round of promotions. Eight sergeants were promoted to lieutenant during the relevant period.

Sgt. Irvine filed two separate discrimination charges on December 1, 1995, and June 26, 1996. Generally, she alleged that she had been discriminated against because of her race, national origin, sexual preference, and sex. She also made specific allegations of discrimination against former Inspector Chris Morris and former Deputy Chief William Jones. While the discrimination charges were being investigated, Ms. Irvine obtained a psychological evaluation indicating that she was disabled and not able to return to work. She has since obtained a disability pension. The charges of discrimination were investigated and findings of 'no probable cause' were made on October 26, 1998. A lawsuit was filed by Ms. Irvine in 1999 alleging discrimination based on race, sex, sexual preference, as well as, sexual harassment under federal and state statutes and city ordinances.

The City sought summary judgment of the lawsuit and the district court dismissed the case in its entirety in 2001. The Plaintiff appealed and the Minnesota Court of Appeals reversed the dismissal in part. The district court reconsidered the summary judgment motion on the issues remanded by the Court of Appeals. On June 11, 2003, the district court dismissed most remaining counts, leaving allegations that the City had retaliated against Ms. Irvine for trial on June 16, 2003. The discussion of the facts is limited to the retaliation allegations remaining for trial.

In evaluating candidates for promotion, the Chief of Police arrives at a consensus with the deputy chiefs concerning the best candidate. The Chief considers supervisor evaluation forms, the applicants internal affairs and Civilian Review Authority complaint history, the results of an oral interview and the deputy chiefs knowledge of the applicant. Supervisors of the employee in the past two years are required to submit evaluation forms. In Ms. Irvine's case only one supervisor submitted a form, Inspector Haynes, who recommended her for promotion. Other supervisors ignored department requests to submit the form. Inspector Morris submitted a supervisor evaluation although she did not supervise Ms. Irvine for the requisite period of time. Deputy Chief Jones submitted a form although he did not directly supervise Ms. Irvine. Both Deputy Chief Jones and Inspector Morris gave negative evaluations to Ms. Irvine. Ms. Irvine alleges that the negative evaluations were in retaliation for the complaints of discrimination filed by her that named Morris and Jones as engaging in discriminatory conduct. Chief Olson testified that he would not have considered the Morris evaluation had he known it was not properly submitted. Chief Olson also testified that a negative evaluation by a deputy chief would prevent a candidate from being promoted.

Essentially, the proof of the retaliation claim by Ms. Irvine would require her to show that Inspector Morris and Deputy Chief Jones were acting for improper purposes in giving her a negative evaluation. Over the years, Ms. Irvine, and witnesses on her behalf, have developed a multitude of examples of incidents that they believe show discrimination. Ms. Irvine is prepared to testify in detail about her treatment. In defense, because of the age of the case, the City is able to elicit only generalities that Ms. Irvine was not the best qualified candidate. City witnesses have no specific recollections of what factors, other than the Jones and Morris evaluations, made Ms. Irvine less qualified. Ms. Irvine had only one negative performance evaluation during her career with the police department, a review done by Morris. Ms. Irvine had one Internal Affairs complaint that was reversed by an arbitrator.

Additionally, the defense of the case has been limited by death and retirements. Deputy Chief Jones, Deputy Chief Schultz and Inspector Morris have retired. Inspector Haynes, who recommended Ms. Irvine for promotion, passed away prior to the start of litigation, so no inquiry into the basis of his recommendation can be made.

The damages claimed by the Plaintiff are extensive. Through 2001, Ms. Irvine claimed approximately \$240,000 in lost wages and psychological injuries of \$100,000.00. Attorney's fees would be recoverable by Ms. Irvine and are estimated to date at \$75,000.00. Additionally, the City could be ordered to return Ms. Irvine to active duty or promote her to lieutenant.

Mediation of the case was attempted in 2001, but was unsuccessful. The mediation terminated with a demand by the Plaintiff in excess of \$200,000.00, as well as, reinstatement as a police officer and promotion to the position of lieutenant. No settlement conference was held in the case while the motion to dismiss was pending, although periodic discussions between counsel occurred. Prior to the recent court ruling, the City had offered \$40,000.00 and the Plaintiff had demanded \$90,000.00. Discussions resumed after the court ruling and order for trial. A tentative settlement was reached in the amount of \$55,000.00, including all claims for costs and attorney's fees. Additionally, Ms. Irvine will be waiving any claim that she may have to return to employment with the police department or the City.

I believe that settling this lawsuit as described would be in the best interests of the City of Minneapolis. While I do not believe that the department retaliated against Ms. Irvine, she is a sympathetic witness who finished high on the promotional examination and suffered measurable damages. Her case may be compelling to a jury, especially when rebutted by non-specific testimony from the City. I have discussed this case with the City Attorney and Chief Robert K. Olson and we recommend settlement, as described above.